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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 1 1994

In the Matter)
)
Billed Party Preference) CC Docket No. 92-77
for 0+ InterLATA Calls)

COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc. ("MFS," formerly Metropolitan Fiber Systems), by its undersigned counsel, hereby submits its comments on the Commission's Further Notice of Proposed Rulemaking ("Further Notice"), FCC 94-117, released in this docket on June 6, 1994.^{1/}

I. INTRODUCTION

MFS is a diversified telecommunications holding company whose subsidiaries provide a variety of services including competitive access services and, in some places, local telephone services. MFS's competitive access subsidiaries operate state-of-the-art digital fiber optic networks in major metropolitan areas across the country. With 32 markets in operation or under development, MFS is the largest competitive access provider ("CAP") in the country.

MFS' networks provide point-to-point dedicated transmission services within major metropolitan areas, including circuits connecting end users to interexchange carrier ("IXC") points of presence, connections among and between IXC facilities, point-to-point private line services between end user premises and dedicated access to local exchange carrier ("LEC")

^{1/} By order, DA 94-703, (released June 24, 1994), the comment filing date in this proceeding was extended to August 1, 1994.

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central offices for interconnection to interstate and intrastate special access services. MFS subsidiaries in New York, Maryland, Washington and Illinois have been granted authority by state regulators to provide both facilities-based and resold local exchange service. Some MFS subsidiaries also provide resold interexchange services, both intrastate and interstate.

As detailed herein, MFS believes that the Commission's tentative conclusion that billed party preference ("BPP") would serve the public interest is substantially flawed because it fails to consider the policy implications of the proposal on competition in the local telephone service market. The Commission's preliminary analysis did not explore in any detail the ramifications of returning a 0+ and 0-^{2/} routing bottleneck to LECs, neither with respect to the resulting loss of local distribution routing flexibility for IXC's and call aggregators nor regarding the structural barriers to efficient 0+ routing that would be faced by potential competitors when transmitting this traffic.

The Commission must study these critical issues before adopting a final decision in this proceeding. If the Commission nonetheless adopts BPP, its decision must demonstrate compelling reasons for adopting a policy that conflicts directly with the Commission's recently affirmed competitive policies for the interstate access market.^{3/} Moreover, the Commission should initiate further proceedings to consider ways to reduce the anticompetitive impact of the proposal on competitive local service providers. Among the

^{2/} Hereinafter referred to as 0+ traffic.

^{3/} Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC No. 94-190 (released July 25, 1994).

changes that should be required under a BPP system is shifting LEC control of the line identification databases ("LIDBs") to a neutral third party administrator.

II. BPP HAS ANTICOMPETITIVE POLICY IMPLICATIONS FOR THE LOCAL TELEPHONE MARKET AND THE INTERSTATE ACCESS MARKET WHICH WERE NOT ADEQUATELY ADDRESSED IN THE FURTHER NOTICE

Since its founding, MFS has fought to break down legal, regulatory and historical barriers to competition in the local telephone service market and has built a growing business that offers customers state-of-the-art services with the highest quality standards and competitive prices. The presence of MFS and other CAPs in the local telephone market has forced incumbent local telephone companies to upgrade their facilities, such as by deploying fiber optic facilities,^{4/} and to change their customer service standards and pricing strategies to meet competitive challenges.

Notwithstanding the Commission's expanded interconnection decisions, competition in the local telephone services market is in an embryonic state.^{5/} In particular, the competitive provision of local exchange service is in effect in only 4 states, while 46 states (and the District of Columbia) still do not have local telephone competition. Moreover, only a handful of states currently are considering adoption of local competition policies. Although MFS strongly believes that full competition in the local telephone market is possible and, as the Commission has found, is in the public interest, MFS recognizes that achievement of this goal requires the vigilant attention of regulators and lawmakers when reviewing current policies and when considering adoption of future policies.

^{4/} See note 6 infra.

^{5/} Id. at paras. 5-6 and 79.

In particular, in a multi-provider context many issues, including BPP, take on new meaning and public interest implications. Unfortunately, without considering the effect of BPP on the potential for fully competitive local exchange and access services and on the relative flexibility IXCs and call aggregators will have in choosing carriers for local distribution and routing of their 0+ interLATA calls, the Commission tentatively concluded in the Further Notice that BPP would serve the public interest.

The Commission must recognize, however, that BPP is antithetical to the development of a fully competitive local telephone market because it will perpetuate a LEC bottleneck in the routing of 0+ interLATA calls. The BPP system, as it has been described in this proceeding, would require that all 0+ traffic (even when originating from a location served by a CAP) must be routed through the LEC's facilities, i.e., the LEC's operator service switch ("OSS"). In other words, when a caller at a phone served by a CAP access line dials 0+, the CAP must send the call to the LEC for one of two purposes, either:

- (1) to check the LIDB listing for the caller's preferred operator services carrier and subsequently return the call to the CAP for routing; or
- (2) to check LIDB for the caller's preferred operator services carrier and to route the call over LEC transmission facilities.

In both cases, the CAP is required to use facilities of its direct competitor -- either transmission facilities, databases or both. It is not a reasonable answer to say that the CAP can build its own database because, given the small market share the CAPs have (estimated at ½ of 1%), the expense of building a LIDB and keeping it up-to-date would be far greater than paying the LEC either to use its database or to use its database and its network to

transmit the call. In either case, however, competitors are forced to use LEC facilities, contrary to the goal of establishing competitive networks.

By foreordaining the routing of all 0+ interLATA calls through LEC facilities, BPP would create an unnecessary and legally-mandated structural barrier to competitive entry in this segment of the local exchange market, in direct contravention of the Commission's expanded interconnection initiative and effectively would keep CAPs out of the local distribution of 0+ traffic. Moreover, the flexible choices IXC and call aggregators currently have for routing their interLATA operator services traffic would be eliminated. For example, BPP would prevent the most efficient use of network facilities by denying large users the ability to buy access services from competitive access providers to route their operator services traffic along with 1+ traffic, rather than funneling all their traffic through a LEC's local network. Moreover, the forced routing of all 0+ traffic through LEC facilities will create a disincentive for aggregators and IXCs to use competitive access services for 1+ services as well when those customers have needs for both 0+ and 1+ routing. Only LECs would be able to offer that efficient transmission capability if BPP is adopted, thus foreclosing a segment of the local market to competitors.

Given the nascent state of competition in local exchange services, such structural barriers to competition and limitations on IXC and call aggregator local distribution routing choices should not be imposed absent compelling reasons. As numerous parties have shown in previously filed comments, the benefits of BPP are marginal and pale in comparison with its high costs, not all of which were factored into the Commission's preliminary cost/benefit analysis. The benefits of simpler dialing for a minority of operator assisted calls (which BPP

allegedly would produce) are not worth BPP's high price and the damage it will inflict on competition in the local telecommunications market.

Unfortunately, BPP will make the LECs the "chosen" carrier for local distribution of all 0+ interLATA traffic, providing them with a comfortable revenue stream from tariffed charges paid by IXCs that will, in turn, produce artificially higher rates for all end users while giving them no competitive options for the local distribution portion of 0+ calls. Moreover, the stranglehold that BPP would give LECs over routing for all 0+ interLATA traffic would incent some of the largest LECs -- the Regional Bell Operating Companies ("ROBCs") -- to act anticompetitively in the interLATA market if and when they are permitted to enter it. The Commission, therefore, should also consider the merits of BPP against the backdrop of the RBOCs' all-out campaign to win interLATA relief in the courts and in Congress.

MFS also finds troubling the Commission's tentative conclusion, based on a scant record, that BPP will enhance the nation's infrastructure.^{6/} It is disturbing that in reaching this conclusion, the Commission apparently focused primarily on dominant LECs as the drivers of such technological improvement.^{7/} Yet, emphasis on dominant LECs as the key

^{6/} Further Notice at ¶ 2.

^{7/} See Further Notice at ¶ 17, where the Commission's discussion of infrastructure enrichment shows an apparent agency focus on only "major LECs." The Commission states that:

the new facilities installed for BPP, including OSS7 in the end office, would enhance the communications infrastructure by improving the signalling capabilities of the network, facilitating the introduction of new services, and increasing efficiency in the provision of existing services. Although major LECs other than Ameritech may lack

(continued...)

deliverers of progress is misplaced and ironic, inasmuch as it has been largely the competitive forces in the access market -- as in all other markets -- that have challenged the LECs to make service enhancements, quality improvements and network upgrades.^{8/}

In assessing the costs of BPP, the Commission must consider the anticompetitive policy implications of BPP in addition to the extreme expense of the system and its uncertain technical operation. Successful implementation of BPP would require coordination among many carriers, who often will be head-to-head competitors, to deploy the technical upgrades required to make the system work at all. Based on the major and pernicious problems CAPs have faced in efforts to work with LECs to implement the Commission's expanded interconnection policies (to cite just one example), MFS submits that there is ample cause to be concerned about whether BPP could be implemented without substantial difficulty and without major disputes between carriers. The large investment at risk would only heighten the potential for conflict and delay in BPP implementation. Moreover, whether the investment is made by CAPs, LECs or both, the cost of BPP implementation inevitably must be passed on to end-user customers.

^{7/}(...continued)

current plans for developing new services that depend on OSS7 in the end office, this capability could aid in the provision of other forthcoming services, such as Customer Local Area Signaling Services (CLASS) services on operator service calls.

Id. The Commission's blind faith in the promise of infrastructure improvement by major LECs is somewhat remarkable in light of its acknowledgement that most LECs apparently have no current plans for using OSS7 other than for BPP. It also is worth noting that the major LECs are divided on the merits of BPP.

^{8/} See e.g., Fiber Deployment Update, (End of year 1993), released by the Industry Analysis Division of the Common Carrier Bureau, (May 13, 1994).

In addition, the Further Notice asked for comments on the effect BPP might have on the development of competition in the local exchange market.^{9/} Competition in that market, however, is new and its future growth cannot be predicted with any certainty. Unfortunately, the nascent state of local service competition renders it impossible for CAPs to quantify the impact of BPP on their businesses at this time. Any such estimates would be speculative and unquestionably would be attacked as such by responsive filings in the record. Even if MFS were to speculate that within a certain time it would be serving a specific share of this market, it is impossible to speculate which segments of the now monopoly-controlled local exchange and access market competitors will penetrate. For example, even if MFS had access (which it does not) to market data indicating the amount of 0+ and 1+ traffic that LECs aggregate for customers to achieve transmission efficiencies, it is not possible to predict how much of that LEC-dominated market segment will one day be served by competitors.

In short, based on the tenor of the Further Notice, MFS has substantial concerns that the Commission may be rushing to judgment on BPP without appreciating the anticompetitive policy impacts of this proposal. Any final action in this proceeding requires a thorough analysis of these issues so that the Commission's decision on BPP does not undercut its efforts to promote local competition.

^{9/} Further Notice, at para. 35.

III. IF THE COMMISSION MANDATES BPP, THEN LEC CONTROL OVER CRITICAL ANCILLARY SERVICES RELIED UPON BY LEC COMPETITORS MUST BE SHIFTED TO A NEUTRAL THIRD PARTY ADMINISTRATOR

MFS expects that the record in this proceeding will provide numerous compelling reasons to reject BPP. If the Commission nonetheless adopts BPP despite its high costs, technical flaws and anticompetitive impacts, the Commission should mandate that LEC control over the necessary ancillary services relied upon by all competitors in the market be shifted to a neutral third party administrator.

The system of interconnected LIDBs controlled by the LECs is a prime example of a critical ancillary service LECs should not control in a competitive environment. If LECs retain control over this system, the potential for abuses and discriminatory behavior vis-a-vis competitors that rely on use of LIDBs will be substantial. Transferring control of LIDBs to a neutral third party administrator would be consistent with the growing trend toward unbundling service elements and lessening LEC control of the database facilities upon which competitors rely.^{10/} In this way, other carriers would be assured that the LECs could not capitalize on their obvious incentive to disadvantage competitors through discriminatory or

^{10/} See, e.g., Provision of Access for 800 Service, 4 F.C.C. Rcd. 2824, 2834-35 (1989), in which LECs, acceding to the concerns of the IXC's, transferred administration of the Service Management System ("SMS") from Bellcore to an independent third party. This change responded to the IXC's' concern that it would be improper for the SMS -- the central 800 data base used for 800 number search, reservation functions and 800 order entry -- to be administered by an entity jointly owned by the BOCs.

See also Administration of the North American Numbering Plan, CC Docket No. 92-237, Notice of Proposed Rulemaking, FCC 94-79 (released Apr. 4, 1994), in which the Commission solicited comments on the designation of a new administrator for the North American Numbering Plan. In order to promote competition and avoid the potential for discrimination, the Commission contemplated that the new administrator will not be closely identified with any industry segment.

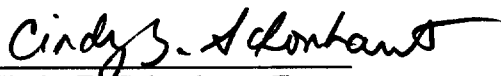
inadequate administration of a service that is vital to all carriers' ability to bill and collect for services.

Accordingly, MFS submits that, if BPP is mandated, in its implementation stage the Commission should seek comment from the public with respect to ancillary services that are controlled by LECs and are critical to the operator services market, with the goal of shifting control to a neutral, independent third party administrator.

CONCLUSION

The Commission should not consider adopting a BPP policy without carefully assessing its impact on the Commission's expanded interconnection policy which seeks to bring competition to the interstate access market. MFS submits that BPP has substantial anticompetitive policy implications for this market which the Commission has overlooked in the Further Notice. When considered along with the high implementation costs of BPP and its persistent technical weaknesses, MFS believes that the Commission must find that BPP is not in the public interest. If the Commission nonetheless mandates BPP, further rulemakings must be conducted to lessen its anticompetitive impact and reduce LEC control over those essential facilities and ancillary services that will be required by all competitors.

Respectfully submitted,
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